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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

UNITED STATES OF AMERICA,

No. 5:23-CR-00021-JGB

Plaintiff,

v.

JASON EDWARD THOMAS CARDIFF,

Defendant.

OPPOSITION TO JASON CARDIFF'S EX PARTE APPLICATION FOR A RESTRAINING ORDER, PRODUCTION OF DOCUMENTS AND COMMUNICATIONS, AND TO SET AN EXPEDITED BRIEFING AND HEARING SCHEDULE

1 Plaintiff United States of America, by and through its counsel
2 of record, the Consumer Protection Branch of the United States
3 Department of Justice and Trial Attorney Manu J. Sebastian, and the
4 United States Attorney for the Central District of California and
5 Assistant United States Attorney Valerie L. Makarewicz, hereby files
6 its opposition to defendant's ex parte application for an order
7 restraining the government, producing documents and communications,
8 and setting an expedited briefing and hearing schedule on the ex
9 parte application. Dkt. 179.

10 This Court's Standing Order sets forth the applicable standards
11 and rules for ex parte applications. The ex parte section provides
12 that "ex parte applications [are] solely for extraordinary relief"
13 and "are considered on the papers and are not usually set for
14 hearing." The Court also advises that "Counsel should become familiar
15 with Mission Power Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488
16 (C.D. Cal. 1995), regarding ex parte applications."

17 The Mission Power Eng'g Co. decision cited in the Order further
18 explains the appropriate circumstances for seeking ex parte relief.
19 "Ex parte motions are rarely justified." Mission Power Engineering
20 Co. v., 883 F. Supp. at 490. "[F]iling an ex parte motion . . . is the
21 forensic equivalent of standing in a crowded theater and shouting,
22 Fire! There had better be a fire." Id. at 492 (internal quotations
23 omitted). "It must show why the moving party should be allowed to go
24 to the head of the line in front of all other litigants and receive
25 special treatment." Id.

26 "An ex parte motion should never be submitted by itself. It must
27 always be accompanied by a separate proposed motion for the ultimate
28 relief the party is seeking." Id. Properly filed ex parte motion

1 papers contain two distinct parts: (1) the first part addresses only
2 why the regular noticed motion procedures must be bypassed; (2) the
3 second part consists of papers identical to those that would be filed
4 to initiate a regular notice motion except they are denominated as
5 proposed and show no hearing date. Id. "These are separate, distinct
6 elements. . . and should never be combined." Id. Defendant fails to
7 follow the correct procedures for an ex parte application. Id.

8 To justify ex parte relief under the first part, "the evidence
9 must show that the moving party's cause will be irreparably
10 prejudiced if the underlying motion is heard according to regular
11 noticed motion procedures" and "it must be established that the
12 moving party is without fault in creating the crisis that requires ex
13 parte relief, or that the crisis occurred as a result of excusable
14 neglect." Id.

15 Motions for discovery five months before trial "do[] not
16 establish that [defendant] will be irreparably prejudiced." Id. at
17 493. In addition, the fact that Defendant failed to return to the
18 United States on January 19, 2025, as required by this Court, does
19 not create a necessity for bypassing regular motion procedures
20 either. Defendant's fugitive status is a result of his own conscious
21 decision to disobey the Court's order to return to the United States
22 and his fear of being extradited if and when an arrest warrant is
23 issued is not grounds for an order pursuant to an ex parte request.

24 "A statement on information and belief by the lawyer preparing
25 the papers is insufficient" to establish why a motion cannot be
26 calendared in the usual manner. Id. at 492. (internal quotations
27 omitted). When unsupportable allegations are made in papers prepared
28 on short notice like this ex parte application:

1 lawyers too often simply make allegations that have no
2 supporting evidence to back them up. Even more
3 pernicious is another tendency: the advocates draw
4 conclusions that appear to be supported by voluminous
5 exhibits, but are not borne out when the evidence is
reviewed with more deliberation and more careful
rebuttal than is possible in hasty hearings on ex parte
motions.

6 Id. at 491.

7 Defendant's application does not comply with this Court's
8 substantive or procedural requirements for ex parte relief.
9 Defendant has not established the existence of an emergency situation
10 that would cause irreparable prejudice to his cause should his motion
11 be heard on a regular schedule nor has he filed a separate proposed
12 motion as required by the Court's Standing Order and Mission Power
13 Eng'g Co. Defendant fails both requirements for an ex parte filing.

14 Defendant's application should be re-filed as a motion, noticed
15 for a hearing, and heard on a normal motion schedule, which allows
16 time for the government to thoroughly review, respond, and advise the
17 Court appropriately. Requiring the government to respond within 24
18 hours is unfair and leads to rushed positions and advice to the Court
19 in a manner that is not as thorough as one under the normal motion
20 filing deadlines. Id. at 490. Being forced to respond within a 24-
21 hour period is a significant disadvantage to the government. Id.

22 The government asks that the Court allow the government the
23 opportunity to respond to defendant's application in the normal
24 course because there is no reason to hear this request ex parte.
25 Defendant's ex parte application should be denied with the Court
26 allowing for defendant's application to be re-filed as a standard
27 motion, noticed for a hearing, and briefed on a regular 28-day
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1 hearing schedule pursuant to Fed. R. Civ. P. 6 and 7 and Local Rule
2 (Civil) 6, 7-9, and 7-10.

3 Dated: January 28, 2025

Respectfully submitted,

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5 AMANDA N. LISKAMM
Director
Consumer Protection Branch

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7 JOSEPH T. MCNALLY
Acting United States Attorney

8 /s/
9 MANU J. SEBASTIAN
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10 VALERIE L. MAKAREWICZ
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11 Attorneys for the Plaintiff
12 United States of America

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